

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEXINGTON INSURANCE COMPANY

Plaintiff

v.

DAVID FORREST and T. BEAUCLERC
ROGERS, IV, STANLEY MUNSON, MARTIN
FINK, all individually, and NEW BEGINNINGS
ENTERPRISES LLC, A California Limited
Liability Company, and TARLO LYONS, a
partnership,

Defendants

CIVIL ACTION

NO. 02-CV-4435

(Hon. Anita B. Brody)

SUBSTITUTION OF AFFIDAVIT

Kindly file of record the attached original, signed Affidavit of Nigel McEwen in place of the facsimile copy of the Affidavit that was included in Tarlo Lyon's Motion to Dismiss Plaintiff Lexington Insurance Company's Second Amended and Supplemental Complaint.

Respectfully submitted,

HARVEY, PENNINGTON LTD.

BY:



DAVID L. PENNINGTON

Identification No: 03633
1835 Market Street, 29th Floor
Philadelphia, PA 19103
(215) 563-4470
Attorneys for Defendant,
Tarlo Lyons

Dated:



9/24/04

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CERTIFICATE OF SERVICE

David L. Pennington, Esquire, attorney for Defendant, Tarlo Lyons, hereby certifies that I have served true and correct copy of the foregoing Substitution of Affidavit was served upon the following parties or their counsel of record by first class mail, postage prepaid on this day:

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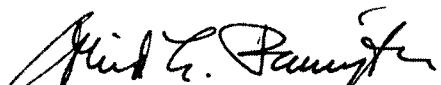
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HARVEY, PENNINGTON LTD.

BY:



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Attorneys for Defendant,
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B E T W E E N :

LEXINGTON INSURANCE COMPANY

PLAINTIFF

- A N D -

DAVID FORREST and T. BEAUCLERC ROGERS, IV, STANLEY MUNSON, MARTIN FINK, all individually, and NEW BEGINNINGS ENTERPRISES LLC, A California Limited Liability Company, and TARLO LYONS, a partnership

DEFENDANTS

AFFIDAVIT OF NIGEL McEWEN
IN SUPPORT OF TARLO LYONS' MOTION TO
DISMISS

I, Nigel McEwen of Tarlo Lyons MAKE OATH and SAY as follows:

1. I am a solicitor and a partner in the law firm of Tarlo Lyons located in London, England. Between 1992 and 2002 I was managing partner of the firm and since that time have remained as a partner, which I have been for eighteen years. From the middle of 1998, I was head of the firm's small Media Department, which role continued until the merger of the Media Department with the firm's Com Tech Department in 2002.
2. I am fully aware of the nature of the proceedings commenced by Lexington Insurance Company in the United States Federal Court for the Eastern District of Pennsylvania, and I am making this Affidavit in support of a Motion being filed by Tarlo Lyons to dismiss the action.

3. To the best of my knowledge based on communications with other partners in my firm, as well as my own personal knowledge regarding contacts of Tarlo Lyons or any of its agents, servants or employees with Pennsylvania in connection with the Flashpoint client of the firm and the circumstances set forth in the complaint of Lexington Insurance Company, the work on behalf of the Flashpoint companies was performed by Stanley Munson or those working with him. The only contact between Tarlo Lyons and Pennsylvania was in the form of telephone calls, e-mails, and/or letters to T. Beauclerc Rogers, IV, who has his home in Gladwyne, Pennsylvania. None of the employees of Tarlo Lyons have visited Pennsylvania in connection with any matter related to Flashpoint or the subject matter of the litigation in which this Affidavit is being filed.
4. Stanley Munson is the single person who would have the most knowledge regarding what was done on behalf of the Flashpoint companies in relation to the allegations in plaintiff's Complaint and he is submitting an Affidavit in connection with the firm's Motion to Dismiss.
5. None of the partners in Tarlo Lyons was aware of any ownership interest on the part of Stanley Munson in any entity related to the Flashpoint companies.
6. My firm has not acted for any client based in Pennsylvania from 1996 to present, the period I have searched. During that period, the firm acted on behalf of clients in the following circumstances:
 - a. Advising clients on a Software License Agreement with a large United States corporation in 2002. Communication took place between my firm's London office and the United States corporation's office in Philadelphia (although I do not believe that location is the Head Office of the US Corporation).
 - b. Advising a large bank on an Agreement for a back-office system to be installed in the United Kingdom and to be supplied by a company based in Wayne, Pennsylvania.

One firm partner went to Philadelphia in 2003 to visit several local law firms but not on behalf of clients. Another partner made a two hour personal visit during that period.

I, Nigel McEwen, verify that the facts set forth in this Affidavit are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Sworn by the said **Nigel McEwen** }

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at ●

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N. D. McE

on the 15th day of September 2004 }

before me,

Deborah Price

A Solicitor/Commissioner for Oaths

*Deborah Price
Knight Naqle
14 St John's Square
London
EC1M 4AJ.*